INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute and regulations involved	2
Statement	2
Argument	7
Conclusion	8

CITATIONS

Cases:	
Bowles v. *Taylor*, Civil No. 22364W. (N. D. Calif.,1943)	4
Bowles v. *Willingham*, 321 U. S. 503	6
Taylor v. *Bowles*, 147 F. (2d) 824	4
Taylor v. *Brown*, 137 F. (2d) 654 certiorari denied, 320 U. S. 787	5, 6
Taylor v. *United States*, 142 F. (2d) 808, certiorari denied, 323 U. S. 723, rehearing denied, 323 U. S. 813	4, 6
United States v. *Taylor*, No. 27815S. (N. D. Calif., 1943)	4
Yakus v. *United States*, 321 U. S. 414	6
Statute and Regulations:	
Emergency Price Control Act of 1942, as amended, 50 U. S. C. App., Supp. V, 901:	
Section 4 (d)	7
Rent Regulation for Housing	2
Section 4 (a)	3
Section 4 (d) (3) and 4 (d) (4)	3
Revised Procedural Regulation No. 3	3

720248—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 558

STANLEY W. TAYLOR, PETITIONER

v.

PAUL A. PORTER, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 462–468) is reported in 156 F. (2d) 805.

JURISDICTION

The judgment of the Emergency Court of Appeals was entered on July 31, 1946 (R. 469). A petition for rehearing was denied on September 4, 1946 (R. 473). The petition for a writ of certiorari was filed in this Court on October 2, 1946. The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price

Control Act, 56 Stat. 23, 50 U. S. C. App., Supp. V, § 924 (d) (referred to herein as the "Act"), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTIONS PRESENTED

1. Whether the provisions of the Act concerning judicial review violate the Fifth Amendment.

2. Whether Sections 4 (a), 4 (d) (3), 4 (d) (4), 5 (d) and 6 of the Rent Regulation for Housing are invalid.

3. Whether certain official administrative interpretations of the Rent Regulation are improper.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, are set forth in 50 U. S. C. App., Supp. V, §§ 901 *et seq.* The Rent Regulation for Housing and Revised Procedural Regulation No. 3 appear in the Federal Register (7 F. R. 4913, 8 F. R. 7322; 8 F. R. 526).

STATEMENT

Petitioner is the owner of an apartment building located at 530 Larkin Street, San Francisco, California (R. 1, 162). For such housing accommodations rented on March 1, 1942, in the San Francisco Bay Defense-Rental Area, Maximum Rent Regulation No. 28[1] provides that the max-

[1] 7 F. R. 4913, issued June 30, 1942, effective July 1, 1942. This regulation was subsequently redesignated Rent Regulation for Housing, 8 F. R. 7322.

imum rent is the rent demanded or received by the landlord on that date. However, if the accommodations were changed from fully furnished to unfurnished, or were substantially changed by a major capital improvement after March 1, 1942, but prior to July 1, 1942, the maximum rent is the first rent after such change.[2]

Petitioner, proceeding on the assumption that the installation of a washing machine and the transfer of the furnishings in the apartments to his managing agent brought him within Sections 4 (d) (3) and 4 (d) (4) of the Regulation, exacted rentals for his apartments in excess of those in effect on March 1, 1942 (R. 94–95). Two proceedings were instituted against petitioner in the United States District Court for the Northern District of California, one for an injunction and

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[2] The sections in question provide as follows:

Section 4. Maximum Rents. Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:

(a) For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

* * * * *

(d) For * * * (3) housing accommodations changed between those dates [after the maximum rent date and before the effective date of regulation] from unfurnished to fully furnished, or from fully furnished to unfurnished, or (4) housing accommodations substantially changed between those dates by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, the first rent for such accommodations after such construction or change: * * *

the other a criminal proceeding for wilful violation of the Regulation. An injunction was issued in the civil proceeding.[3] A verdict of guilty was returned by the jury in the criminal proceeding.[4] The judgments in both the criminal and civil actions were affirmed by the Circuit Court of Appeals for the Ninth Circuit.[5] A petition for a writ of certiorari to review the judgment in the criminal action was subsequently denied by this Court, and a petition for rehearing was also denied.[6] Petitioner has already served the term of imprisonment to which he was sentenced (R. 145–146, 225).

In the proceedings referred to above, petitioner contended, *inter alia,* that the review provisions of the Act were unconstitutional because they did not afford him adequate opportunity to test the validity of the Act and the Regulation before he was tried and convicted; and that the Sections of the Regulation upon which the enforcement actions were based were void for indefiniteness. However, in 1942, petitioner, prior to the institution of the criminal and civil proceedings against him, filed a protest against the Act

[3] *Bowles* v. *Taylor*, Civil No. 22364 W. (N. D. Calif., 1943).

[4] *United States* v. *Taylor*, No. 27815 S. (N. D. Calif., 1943).

[5] *Taylor* v. *United States*, 142 F. (2d) 808 (C. C. A. 9.); *Taylor* v. *Bowles*, 147 F. (2d) 824 (C. C. A. 9).

[6] *Taylor* v. *United States*, 323 U. S. 723, rehearing denied, 323 U. S. 813.

and the Regulation. This protest was denied by the Price Administrator, and petitioner's ensuing complaint filed with the Emergency Court of Appeals was dismissed on July 15, 1943,[7] long before the time when the judgments in the enforcement proceedings became final.

The questions presented by the petitioner in the instant case before the Emergency Court of Appeals were substantially the same as those theretofore decided by the Circuit Court of Appeals for the Ninth Circuit in 1944 and 1945 and the Emergency Court of Appeals in 1943. Essentially, the court below was asked to pass upon four groups of claims, namely: (1) that the Act is unconstitutional; (2) that the Rent Regulation is invalid; (3) that the Administrator's interpretations of the Rent Regulation are confusing and misleading; and (4) that the decisions of the District Court and Circuit Court of Appeals were erroneous (R. 462–468).

The contention most strenuously advanced by petitioner in the court below was that the Act offended the Fifth Amendment because, under its review provisions, particularly as to exclusive jurisdiction, it was possible for a defendant in a criminal case to be convicted of violation of a regulation by an enforcement court bound to assume its validity, before the petitioner could secure a

[7] *Taylor* v. *Brown*, 137 F. (2d) 654 (E. C. A.), certiorari denied, 320 U. S. 787.

determination of validity by the Emergency Court, even though he was diligently seeking to do so (R. 361–413). Petitioner contended that this was precisely what happened to him and that he was not precluded by the decisions of this Court from raising this issue, because *Yakus* v. *United States,* 321 U. S. 414, expressly left it undecided.

The Emergency Court of Appeals held that this contention was not open to the petitioner because, *inter alia,* his case did not come within the area left open for decision in the *Yakus* case, and that, in any event, petitioner had raised various constitutional questions in the District Court and the Circuit Court of Appeals, which were decided adversely to him and that petitioner raised this very contention in his petition for a writ of certiorari to review the decision of the Circuit Court of Appeals which was denied by this Court. *Taylor* v. *United States,* 323 U. S. 723, rehearing denied, 323 U. S. 813.

The remaining objections leveled at the statute by petitioner were disposed of on the ground that they had been passed upon adversely to the petitioner either by this Court in *Yakus* v. *United States, supra,* and *Bowles* v. *Willingham,* 321 U. S. 503, or by the Emergency Court of Appeals in *Taylor* v. *Brown,* 137 F. (2d) 654 (E. C. A.), certiorari denied, 320 U. S. 787.

Petitioner's arguments that certain provisions of the Rent Regulation are vague and uncertain were also held to be without merit. The contention that the Regulation is invalid because it compels petitioner to offer his accommodations for rent, in violation of Section 4 (d) of the Act, was rejected as was the claim that the Regulation was not generally fair and equitable. Objections to the propriety of certain official administrative interpretations were likewise rejected. Finally, the Emergency Court of Appeals pointed out that it could not consider the contention that errors had been committed by the District Court and the Circuit Court of Appeals in the enforcement proceedings involving petitioner; that such contention could be advanced only in the course of the normal appellate procedure prescribed by law; and that petitioner had in fact invoked this procedure to the full and was bound by the results, however adverse they might be.

ARGUMENT

The petitioner prays that certiorari be granted in order that this Court may decide at least the 16 questions listed in the petition (Pet. 6–10). Review of the decision of the court below is not warranted, however, because these questions either have already been decided adversely to petitioner by this Court,[8] and by the Circuit Court of Ap-

[8] In this category are the questions designated in the petition as 4, 5, 6, and 7 (Pet. 7–8).

peals for the Ninth Circuit and the United States Emergency Court of Appeals in cases in which this Court denied certiorari,[9] or are without substantial significance in federal law.[10]

CONCLUSION

The decision below is correct and does not warrant further review. The petition should therefore be denied.

Respectfully submitted.

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NOVEMBER 1946.

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[9] In this category are the questions designated in the petition as 1, 2, 3, 4, 8, 9, 10, 11, 12, 14, 15, and 16 (Pet. 6–10).

[10] In this category are the questions designated in the petition as 11, 12, and 13 (Pet. 9–10) which were also clearly decided correctly by the court below; and with respect to question designated 13, the petitioner concedes that the refusal of the Emergency Court to review decisions of other federal courts was correct, therefore raising no question warranting review.

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